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Rinze Benedictus

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EXAMINER

ROE, JESSEE RANDALL

ART UNIT

PAPER NUMBER

1793

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Continuation Sheet

Applicant's arguments filed 21 July 2008 have been fully considered but they are not persuasive.

First, the Applicant primarily argues that when applying the mandatory solubility equations for the magnesium levels of claim 23 results in $Cu_{max} = 4.22\%$ and $Cu_{min} = 2.95\%$ would result in a different alloy than the alloy recited in claim 23 which recites 4.3 – 4.9% Cu. The Applicant goes further to show how the amounts of copper and magnesium in the instant invention do not overlap the compositions of Cassada III ('516) in the Chart on page 8 of the Remarks filed 21 July 2008.

In response, the difference between the amount of copper in the copper-containing aluminum base alloys of the instant invention and the amount copper in the copper-containing aluminum base alloys disclosed by Cassada III ('516) would be 4.3 weight percent copper having a 1.5 weight percent magnesium composition versus 4.22 weight percent copper having 1.5 weight percent magnesium. A prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. MPEP 2144.05 I. The Applicant has not shown that the properties of these compositions would necessarily have distinct properties.

Second, the Applicant primarily argues that Alloy 2 is closer to claim 56 than the closest exemplified alloy of Cassada III ('516); Alloy 1 shows unexpected advantages over Alloy 2 ;and proof of unexpected properties may be in the form of direct or indirect testing of the claimed invention and the prior art. Thus, the patentability can be

established by proof of improved results for the claimed invention in comparison with prior art even more closely related than the prior art relied upon by the Examiner.

In response, although the Applicant may provide such comparisons, the Examiner notes that according to Tables 2 and 3 on page 14 of the Remarks filed 21 July 2008, Alloy 1 has a lower ultimate tensile strength than Alloy 2; Alloy 1 has a tensile yield strength substantially similar to the tensile yield strength of Alloy 2; Alloy 1 has a lower improvement in the lifetime over AA2024 than Alloy 2. Thus, it is unclear how the Applicant concludes Alloy 1 shows unexpected properties over Alloy 2.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessee Roe whose telephone number is (571) 272-5938. The examiner can normally be reached on Monday-Friday 7:30 AM - 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Roy V. King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1793

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